

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND ) MDL NO. 13-02419-FDS  
COMPOUNDING )  
PHARMACY CASES LITIGATION )  
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BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV.

STATUS CONFERENCE

John Joseph Moakley United States Courthouse  
Courtroom No. 2  
One Courthouse Way  
Boston, MA 02210

October 8, 2013  
1:30 p.m.

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PROCEEDINGS

THE CLERK: All rise. Thank you. Please be seated. Court is now in session in the matter of in re: New England Compounding Pharmacy, Incorporated Products Liability litigation. This is Case Number 13-md-02419. Counsel for plaintiffs' steering committee, please identify yourself for the record.

MS. PARKER: Good afternoon, your Honor, Kristen Johnson Parker with Hagens, Berman, Sobol, Shapiro for the plaintiffs' steering committee.

MR. SOBOL: Good afternoon, your Honor, Mr. Sobol with Ms. Parker.

MS. DOUGHERTY: Good afternoon, your Honor, Kim Dougherty from Janet, Jenner & Suggs on behalf of the plaintiffs' steering committee.

MR. GASTEL: Good afternoon, Ben Gastel from Branstetter, Stranch & Jennings on behalf of the plaintiffs' steering committee.

MR. ELLIS: Rick Ellis for various plaintiffs.

MR. FENNEL: Patrick Fennell for the plaintiffs' steering committee.

MR. GOTTFRIED: Michael Gottfried for the trustee, Paul Moore.

MR. MOLTON: Good afternoon, your Honor,

1 David Molton of Brown Rudnick with Kiersten Taylor for  
2 the official committee of unsecured creditors.

3 THE CLERK: Mr. Fern.

4 MR. FERN: Good afternoon, Judge,  
5 Frederick Fern on behalf of the retained counsel on  
6 behalf of the trustee.

7 MR. GAYNOR: Good afternoon, your Honor,  
8 Robert Gaynor, Sloane and Walsh on behalf of the  
9 individual defendants.

01:33PM 10 MS. SAMSON: Good afternoon, your Honor,  
11 Nicki Samson, Michaels, Ward & Rabinovitz for Medical  
12 Sales Management.

13 MR. DEAN: Richard Dean from Tucker, Ellis  
14 for Ameridose.

15 THE COURT: All right. Anyone else?

16 MR. THOMAS: Joe Thomas on behalf of GDC.

17 MS. SCHAEFFER: Karen Schaffer on behalf of  
18 multiple plaintiffs.

19 MS. KELLY: Good afternoon, your Honor,  
01:34PM 20 Sarah Kelly from Nutter, McClennen & Fish for St. Thomas  
21 Hospital, St. Thomas Network and St. Thomas Health.  
22 With me is Marcy Greer and Yvonne Puig.

23 THE COURT: All right. Good afternoon,  
24 everyone. This is our monthly status conference. I  
25 have the joint proposed agenda, which I will propose to

1 follow. The first item is update on subpoenas and  
2 objections. Who's going to take the lead? Mr. Fennell.

3 MR. FENNELL: Good afternoon, your Honor,  
4 this is Patrick Fennell for the plaintiffs' steering  
5 committee. We had a hearing with Judge Boal about two  
6 weeks ago in which she ordered the production of a  
7 joint -- a chart showing all the various clinics vs.  
8 their objections, and this was based on a spreadsheet  
9 that the plaintiffs' steering committee had developed  
01:35PM 10 early on, and she wanted it submitted as a joint  
11 endeavor between the plaintiffs' steering committee and  
12 all of the clinics.

13 We have since had a conference call with all  
14 of the counsel representing many of the clinics in order  
15 to iron out as many of our differences on the chart as  
16 we can. The chart is scheduled to be filed no later  
17 than October 16th, and I think objections to the chart  
18 as filed are due on October 23d, and then we will have a  
19 substantive hearing with arguments in November on the  
01:35PM 20 morning of the same day as this Court's next status  
21 conference, which I believe is November 7th, and in the  
22 process of our conference call, we have ironed out some  
23 of the differences, and I think we've also gotten some  
24 of the clinics to go ahead and produce documents in the  
25 process of all this, so we are making progress and



1 moving forward.

2 THE COURT: All right. Does anyone else  
3 want to be heard on that topic? All right. That's item  
4 Number 1. Item Number 2, status of mediation efforts.

5 MR. MOLTON: Your Honor, David Molton for  
6 the official committee of unsecured creditors, and I'm  
7 here to give your Honor a status report but also to ask  
8 for certain extensions of time of deadlines in the  
9 mediation order supported by a motion of the committee,  
01:36PM 10 the plaintiffs' steering committee and the trustee for  
11 the purpose of bringing into the tent as many people as  
12 possible.

13 And let me give your Honor an update, which  
14 I think provides facts that supports our joint motion,  
15 and we've had a number of people, your Honor, as your  
16 Honor knows, from the docket opt into the mediation, but  
17 there is presently large groups of defendants that for  
18 various reasons did not opt in by the September 23d date  
19 but are presently actively engaged in discussions with  
01:37PM 20 one or more of the movants, the plaintiffs' steering  
21 committee, the security of unsecured creditors and the  
22 trustee in terms of joining into the mediation.

23 My understanding as well as my actual  
24 knowledge is that these groups encompass, do encompass  
25 and may include in the mediation dozens of clinics, and

1 those discussions are ongoing, and, accordingly, we  
2 thought it appropriate to have a short stop of the  
3 deadlines in order to allow those groups to continue  
4 discussions with the interested parties, have input into  
5 such items as the selection of mediators, and give  
6 people time in order to what we believe to come  
7 participate, come under the tent of this important  
8 aspect of this case.

9 For those reasons, your Honor, we believe  
01:38PM 10 that the opt-in, which was scheduled for the 23d, should  
11 remain open for 21 days, and we'd ask your Honor to  
12 extend it for a 21-day period until October 28th to  
13 allow these discussions to proceed and hopefully bring  
14 in more people under the tent.

15 We don't believe that there's any prejudice,  
16 your Honor, for this request. As my friend,  
17 Mr. Gottfried, will point out during his part of today's  
18 status report, the bar date has been set by Judge Boroff  
19 for January 15th, and, accordingly, until that date, we  
01:38PM 20 really won't know the universe of claimants, so the  
21 extension of the deadline for a 21-day period will not  
22 have a material effect in progressing or impairing the  
23 progress of this case, and, second of all, we think it's  
24 beneficial to do our best to get as many people under  
25 the mediation tent as possible.

1           Also, your Honor, I want to advise you that  
2       we've asked for an extension of the dates as well  
3       because we've not yet been able with the folks who have  
4       opted in to arrive at a consensual mediator pick to  
5       offer to your Honor, and instead of belaboring your  
6       Honor with various proposals by the parties, we thought  
7       it appropriate to give a little more effort in terms of  
8       seeking to try and find common ground on the choice of  
9       mediator.

01:39PM

10           I do know that the parties are actively  
11       engaged in interviewing proposed mediators who have been  
12       offered by certain parties. That even happened as late  
13       as yesterday. The extension will allow also parties  
14       that may want to become involved in the mediation the  
15       important opportunity to be involved in the mediator  
16       selection process as well, and, accordingly, we think  
17       it's important for movement in this case for those dates  
18       to be extended.

01:40PM

19           Accordingly, in connection with the joint  
20       motion we filed today, your Honor, we think it's very  
21       helpful and will add value to the mediation effort to  
22       extend the opt-in date to October 28th, to extend till  
23       October 28th, which is a 21-day period, the date for the  
24       submission of a consensual selected mediator, to extend  
25       until November 4th, which is 21 days after the date for

1 this deadline, a submission date for mediators for your  
2 Honor's consideration if consent is not obtained, and  
3 also we thought appropriate to put off till after that  
4 period of time the proposal for a fee structure, which  
5 was front-ended originally in the mediation order till I  
6 think earlier in the deadline process so that, again, we  
7 can have all parties that want to become involved and  
8 then do become involved, possibly with the help of a  
9 mediator, come and bring your Honor a

01:41PM

10 consensually-agreed upon fee proposal for how the  
11 mediator will be paid and the mediation will be paid,  
12 and then to extend -- and we're asking that that date be  
13 November 11th, your Honor, and then November 11th also,  
14 your Honor, for the date when the parties would offer a  
15 mediation procedures protocol or order to your Honor.

16 So I do know that the trustee and the PSC  
17 support this, and we would ask your Honor respectfully  
18 to grant those extensions as part of your Honor's case  
19 management functions.

01:41PM

20 THE COURT: All right. Does anyone else  
21 want to be heard on this?

22 MS. DOUGHERTY: Kim Dougherty, your Honor,  
23 on behalf of the plaintiffs' steering committee. We  
24 just want to alert the Court that we have been making  
25 progress with respect to potential mediators. We have

1    been interviewing mediators that were proposed by ARL  
2    and Victory, two of what we're calling the national  
3    defendants.

4                   We have had a phone call yesterday with the  
5    potential mediator that both of those parties had  
6    proffered up. The challenge that we are foreseeing and  
7    that has been coming up is contemplation of one vs. more  
8    than one mediator because various entities have the  
9    mediators in their region that they are more comfortable  
01:42PM 10   with, so we're working towards trying to come to an  
11   agreement to one mediator but also understanding that,  
12   for example, the clinics that are in this mediation  
13   program out of Florida are offering up other names, so  
14   the process is a little bit longer because we are  
15   conducting interviews of the folks that have been  
16   proposed because we want to give the defendants an  
17   opportunity to have a say in the matter, but that is one  
18   of the challenges that we're trying to work through,  
19   whether or not we're going to be able to move forward  
01:43PM 20   with one or whether or not we're going to need more than  
21   one.

22                   We were asked by the trustee and the  
23   official creditors' committee to agree to a three-week  
24   extension, and we did so because we are hopeful that the  
25   negotiations that are ongoing right now with some of the

1 clinics, with the trustee, and, in fact, some of the  
2 plaintiffs' steering committee members -- one is going  
3 on today with the Michigan clinics -- will be fruitful  
4 and bring in more participants to the mediation program.

5 THE COURT: All right. I'm not sure I have  
6 a view about one mediator vs. multiple mediators. That  
7 probably means I should just hold my tongue and not say  
8 anything at all -- but I can see advantages both ways --  
9 and see how this plays out.

01:44PM

10 I certainly would like this process to get  
11 going if it's going to work, but I also don't see that I  
12 have a problem with this relatively brief extension, and  
13 I think ARL has filed a related motion for extension of  
14 time within which to file a proof of claim. I don't see  
15 any problem granting that either.

16 Does anybody else want to be heard on the  
17 topic generally, either on the two motions pending or  
18 mediation generally?

19 (No response)

01:44PM

20 THE COURT: All right. Rather than wait the  
21 additional time, I think I'm going to grant the joint  
22 motion, which I think is docket Number 502, extending  
23 the deadline to October 28th with certain additional  
24 extensions as set forth in paragraph 8 that take us out  
25 to November 11th and also grant the motion of ARL Bio

1 Pharma for extension of time within which to file proof  
2 of claim, docket Number 465.

3 November 11th Mr. Cicolini points out is  
4 Veteran's Day. Why don't we make those November 12th.  
5 That will be the proposal for the fee sharing structure  
6 and the deadline for meeting and conferring. Some of  
7 those deadlines assume we're going to have a functioning  
8 Federal Government still next month. I'm going to  
9 proceed on that assumption as well.

01:45PM 10 All right. Unless there's anything else on  
11 mediation, Number 3, collection of medical records.

12 MS. PARKER: Your Honor, the parties have  
13 agreed to take that item off of the agenda.

14 THE COURT: All right. Number 4 is pending  
15 motions. We have St. Thomas' motion for  
16 reconsideration, which I have read, and several parties  
17 have joined in it, and plaintiffs' steering committee  
18 has filed a response as well. Who wants to be heard for  
19 St. Thomas? I'm sorry, you're Ms. --

01:46PM 20 MS. GREER: Marcy Greer, your Honor.

21 THE COURT: Greer, all right.

22 MS. GREER: And I thank you for the  
23 privilege of appearing before the Court to be heard on  
24 this motion. As the Court is aware, our clients have  
25 not been in the MDL until very, very recently. The

1 circumstances of this are very unusual because typically  
2 in the MDL, the cases are filed, and then the MDL  
3 proceeding happens, and then everybody is moved over.  
4 That hasn't been the case with us.

5 In the last few weeks, over 100 cases have  
6 been filed against our clients and others, mostly in the  
7 Middle District of Tennessee, a few in this Court, and  
8 they are in the process of being served, being  
9 transferred to this Court, et cetera.

01:47PM

10 In fact, we were not even in the MDL until  
11 the afternoon of September 9th, which is an important  
12 date because that's when some of the meet and confers  
13 that are discussed in the response were talked about.

14 THE COURT: Let me -- not to interrupt, I  
15 apologize. I guess I'm not particularly interested in  
16 hearing -- I know both sides are unhappy with one  
17 another about how we got from there to here, I guess,  
18 whether there was an appropriate meet and confer,  
19 whether certain representations were made or not made.

01:47PM

20 I'm less interested in that and more interested in how  
21 can I make sure this is fair to everyone on a going  
22 forward basis as well as manageable and efficient at the  
23 same time?

24 MS. GREER: I appreciate that. I just  
25 wanted to give the Court some background when we



1 appeared and why. Where we are now is that we have 100  
2 lawsuits that are going to be in the process of having  
3 to be answered or motions to dismiss filed, and they're  
4 all pretty much the same in terms of the allegations,  
5 but there are different plaintiffs' lawyers involved and  
6 different iterations of the above.

7 The complaints are typically 50 pages long,  
8 multiple hundreds of paragraphs, multiple counts,  
9 multiple parties, and as the Court's order stands, we  
01:48PM 10 will start having to answer I think 8 to 12 of them  
11 tomorrow, filing our responsive pleadings.

12 We asked that the Court first and foremost  
13 defer that deadline. Our first proposal would be to use  
14 the master complaint process that has been established  
15 under CMO-7, those dates have been set, and use that  
16 process because it's designed to work the way it's  
17 supposed to work, which is the plaintiffs put together  
18 what their key allegations are in one document, we  
19 respond to one document with a master answer, master  
01:49PM 20 motion to dismiss and then deal with it at that point.

21 And so we ask the Court to consider doing  
22 that, or at the minimum, giving us additional time, 60  
23 days, at least, to get all these lawsuits answered. I'm  
24 worried about the CM/ECF system being inundated with  
25 these long pleadings.

1 THE COURT: Well, as I'm sure you know,  
2 that's certainly the way I expect it to operate for  
3 claims arising in 44 different states, and I was  
4 persuaded, I guess, is the right word that for six  
5 states, including Tennessee, that because of some  
6 special circumstance, a one-year statute of limitations  
7 or equivalent, something that required certain things to  
8 occur within one year, that that would be unfairly  
9 prejudicial unless we did things more formally. We now  
10 are, I guess, past the one-year anniversary of this  
11 problem coming to light.

01:49PM

12 It certainly is not my intention to require  
13 anyone to do unnecessary work, which is why, among other  
14 things, I said you don't have to file a memorandum in  
15 support of a motion to dismiss. In other words, the  
16 idea here is just do the minimum that needs to be done  
17 in order to make sure certain things happen by the  
18 relevant time frame, then we can sort it out later.

19 I'd be amenable to any proposal that would  
20 permit something short of that. I think one of  
21 plaintiffs' concerns is identifying third-party  
22 defendants, as I understand it. In other words, either  
23 cross-claims or third-party claims that clients such as  
24 yours might make, defendants such as yours might make,  
25 you know, within this time frame so that the statute of

01:50PM

1 limitations doesn't expire, but my intention is to be,  
2 again, fair, trying to balance out all these different  
3 considerations without requiring some poor paralegal or  
4 associate to grind their way through hundreds of  
5 documents that no one is ever going to read, and I'll  
6 listen to any proposal that satisfies the interests of  
7 both sides, and the default is always going to be the  
8 Rules of Civil Procedure if I can't figure out anything  
9 better to do.

01:51PM

10 MR. GASTEL: Your Honor, Ben Gastel on  
11 behalf of the plaintiffs' steering committee, if I may  
12 just put forward just a couple of issues here. I can't  
13 say I've reviewed all complaints that have been filed by  
14 the Tennessee plaintiffs, but I'm very familiar with the  
15 complaint, and although it's not a true master  
16 complaint, there are significant overlap between the  
17 allegations of all those complaints, and so it's not  
18 that they're having to answer different --

01:52PM

19 THE COURT: I'm not shocked to hear that  
20 either. I'm familiar with word processors.

21 MR. GASTEL: So I think that should belie  
22 some concern with regard to the associates having to  
23 devote an inordinate amount of time to answering  
24 complaints, but also going to the idea that we sought  
25 answers to these complaints so that we could have

1 identities of comparative fault parties.

2 We have offered to sort of -- we have asked  
3 the St. Thomas entities, along with their affiliated  
4 clinic, STOPNC, to go ahead and identify the people that  
5 they think might be at comparative fault, and they have  
6 simply not taken us up on that offer with regard to each  
7 of the complaints, and that's why we have sort of  
8 aggressively pushed the filing of answers, and with  
9 regard to I know I've been on several phone calls with  
10 the affiliated STOPNC Clinic.

01:53PM

11 We are certainly work to work with them. I  
12 believe the vast majority of Tennessee plaintiffs have  
13 granted them a 45-day extension on filing answers.  
14 We're happy to work with the St. Thomas entities to  
15 accommodate a reasonable request on extension, but we  
16 think that the Court's strategy that is planned out has  
17 been carefully balanced, and we'd request that the Court  
18 sort of maintain that balance that it has previously  
19 decided.

01:53PM

20 THE COURT: I'm flattered that you call it  
21 both the strategy and a careful one. Ms. Greer, I'll  
22 let you respond.

23 MS. GREER: Your Honor, just to be clear, my  
24 clients do not operate hospitals where MPA was  
25 administered that was sold by NECC. They're in it on

1 vicarious liability theories only, so we would be filing  
2 motions to dismiss, and, yes, they would probably look a  
3 lot alike, but there are differences, you've got to get  
4 the complaint paragraphs right. It takes time.

5 I don't know what information they're going  
6 to get because the motion to dismiss typically doesn't  
7 reveal third parties, and we're still getting our arms  
8 around the dispute and everything else at this point,  
9 and they're asking us to commit to something that no  
10 other parties in this lawsuit are being asked to commit  
11 to, and if the issue is coming up with one master  
12 pleading, I think we can work out something like that.

13 If we have one master pleading to respond  
14 to, we've already answered four lawsuits in Tennessee,  
15 state court that were filed there and then dismissed and  
16 then nothing, and then all of a sudden this onslaught.  
17 There were notices of intent and things like that going  
18 on, but, again, we're vicarious liability defendants  
19 only, and so until the lawsuits were filed and things  
20 started getting in the MDL, we've been in kind of  
21 no-mans land.

22 THE COURT: Do you expect to file motions to  
23 dismiss in every case because in that case you don't  
24 have to do the paragraph by paragraph answer thing,  
25 right? In other words, I'm not requiring you to file a

1 memorandum of law, so wouldn't it be just a matter of  
2 identifying the grounds on which you say the complaint  
3 fails to state a claim?

4 MS. GREER: It would, your Honor, but if you  
5 look at the situation with Tennessee, he's been  
6 intervening in all of these cases. I mean, every day  
7 we're all getting hundreds of e-mails, notifications  
8 that they filed, yet another motion to intervene,  
9 another brief in support and all of the things --

01:55PM

10 THE COURT: Is it the State of Tennessee?

11 MS. GREER: The State of Tennessee, and so  
12 I'm thinking that there's a better way to streamline  
13 this process. You know, we're willing to do a master  
14 answer, if need be, on a reasonable basis, if there is a  
15 pleading that we can respond to, but the point is this  
16 is not the streamlined process that I think makes any  
17 sense, and it won't give them any more information.

18 MR. GASTEL: I think we're happy to confer  
19 with them about a master complaint process sort of.

01:55PM

20 THE COURT: Master of Tennessee complaint?

21 MR. GASTEL: Yes, but, I mean, we sort of  
22 wish that this would have been brought to our attention  
23 60 days ago as opposed to today. This is the first time  
24 that I'm hearing that they're sort of willing to --

25 THE COURT: I don't have a time machine, so

1 let's talk about what we can do going forward. Does it  
2 make sense for you to try to meet and confer and see if  
3 you can't work out some streamline way of dealing with  
4 this?

5 MR. GASTEL: We are happy to do that with  
6 the St. Thomas entities.

7 MS. GREER: Yes, your Honor.

8 THE COURT: Which would require, I mean, if  
9 you have things due tomorrow, you'd have to at least  
01:56PM 10 assent to some brief extension of time in order to make  
11 that work, that is, the plaintiffs would have to. Would  
12 that be a problem, Mr. Gastel, do you expect?

13 MR. GASTEL: No. Like I said, we've been  
14 granting STOPNC that 40-day extension for the vast  
15 majority of the complaints or the answers that they need  
16 to file.

17 THE COURT: All right. I feel I'm at a  
18 disadvantage here, not knowing, of course, anything  
19 about Tennessee product liability law, but I think what  
01:56PM 20 makes sense to me is to direct you to try to meet and  
21 confer. If you come up with any reasonable proposal,  
22 I'm likely to approve it; if you can't agree, you want  
23 to offer competing visions of how my order should be  
24 modified to take care of these interests, I'd be willing  
25 to consider that.

1           In the meantime, I guess the order will stay  
2     in place until somebody convinces me that it doesn't  
3     make sense anymore, and I certainly don't think that  
4     there's any point in flooding the system with answers,  
5     which is maybe the least meaningful document filed in  
6     any court in the United States nowadays, right, whoever  
7     looks at answers unless they contain an affirmative  
8     defense, but still this process has to be orderly, and  
9     it has to protect the rights of both the defendants and  
01:57PM 10    the plaintiffs, so let's do this.

11           Why don't you meet and confer, and if you're  
12    unable to agree on a joint proposal, let's say in two  
13    weeks, by October 22d, you can submit competing motions  
14    or not, I mean, also plaintiff may prefer the status  
15    quo, and we'll take it from there. Will that work,  
16    Ms. Greer?

17           MS. GREER: Yes, your Honor, that will work.

18           THE COURT: Mr. Gastel?

19           MR. GASTEL: That's fine, your Honor.

01:58PM 20           THE COURT: Are there other plaintiffs'  
21    counsel that need to be involved in this? In other  
22    words, do you speak for all Tennessee plaintiffs,  
23    Mr. Gastel?

24           MR. GASTEL: Yes, we also serve as the  
25    Tennessee state chair.



1 THE COURT: Remind me, is someone from  
2 Tennessee on the PSC, right?

3 MR. GASTEL: It's George Stranch. He's in  
4 my office, your Honor.

5 THE COURT: All right. He's a IV, right?  
6 We have a bond.

7 MR. GASTEL: That's correct, and very much  
8 to his chagrin, there's not a V.

9 THE COURT: There's none in my family  
01:58PM 10 either. All right.

11 MS. GREER: Your Honor, that wasn't the only  
12 problem we had.

13 THE COURT: Yes, go ahead.

14 MS. GREER: I also wanted to address the  
15 bellwether provision of the order because that is also  
16 very problematic in terms of it's picking a date before  
17 a process has even been arrived upon, and we gave the  
18 Court a flavor of at least Judge Fallon's views, you  
19 know, based from the bench, of the types of  
01:59PM 20 considerations that go into that process.

21 It's usually very complicated because, of  
22 course, the goal is to get a representative sampling to  
23 try cases so that there is confidence in the result so  
24 that the Court can have information about how these  
25 cases could be tried, and the parties can have

1 information about what the settlement values might be.

2 Without that, as the *In Re: Yasmin* Court  
3 said, it's a waste of everybody's time, and that's what  
4 we're trying to avoid, and I think that setting a date  
5 for six bellwether cases in January is very premature at  
6 this point.

7 I'm not even sure that these cases are  
8 appropriate for bellwether trials because once NECC, if  
9 they are discharged from bankruptcy and the affiliated  
02:00PM 10 defendants are able to settle, you've got a series of  
11 clinics all over the country with very, very different  
12 issues, and those cases may not really result in  
13 appropriate bellwether trials, so that's the threshold  
14 question to be asked, and then if it were appropriate,  
15 what does it look like because the pick 3 per side model  
16 was an early on, but that doesn't work in the real world  
17 anymore.

18 I think that the courts have shown through  
19 experience that you really need to have a process to  
02:00PM 20 select representative cases so that we can gain  
21 information. We don't have medical records. I mean,  
22 there's been a discussion about some medical records.  
23 Yes, medical records are being obtained as to parties  
24 that are defendants in Tennessee right now. There is a  
25 limited HIPAA waiver that has been provided, but that's

1 it. That's just going to have your treatment records  
2 and your records as to when the MPA was administered.  
3 That's not going to have the history, the  
4 co-morbidities, the confounding factors, the types of  
5 things that go into a decision whether this is a  
6 representative plaintiff from which we can draw  
7 information.

8 We also mentioned the Lexicon issue, which  
9 is a big one. It's been a deal killer in many MDLs,  
10 including the *Denture Adhesive* litigation before  
11 Judge Altonaga. They never got to bellwether trials  
12 because there weren't Lexicon waivers. You know,  
13 Lexicon, of course, being the case that the  
14 Supreme Court said an MDL court does not have the  
15 authority to try a case without it being properly venued  
16 there in the first place or the parties consent.

17 And *Denture Adhesive*, some of the parties  
18 would not give a consent, and, so, therefore, there were  
19 only a very few cases that were actually filed in the  
20 Southern District of Florida, and so they never got  
21 there, and that's not unusual. It's an issue that  
22 Judge Fallon raised in his law review article, which I  
23 think is insightful.

24 THE COURT: Basically I agree with what  
25 you're saying, okay, to cut to the core. I don't know

1 what this case is going to look like. I don't know,  
2 plaintiffs proposed, I think, an even more aggressive  
3 schedule. I went as far as the bellwether designation,  
4 which I think may work if it's what I'll call an NECP  
5 case, okay. If it's not an NECP case, that date can't  
6 remotely work, and there are in my mind at least three  
7 major groups of defendants: There's NECP/affiliates,  
8 there are what I'll call service supplier companies, and  
9 then there's these individual pain clinics, physicians  
10 and so forth.

02:02PM

11 It's by no means clear to me certainly  
12 without consent that I can preside over a Tennessee case  
13 against a Tennessee pain clinic. It's not clear to me  
14 that I can resolve motions to dismiss or motions for  
15 summary judgment. I want to talk about that, how that  
16 process is going to play out. Maybe I do, maybe I  
17 don't, but I think we're very far from making those  
18 kinds of decisions.

19 On the other hand, because this case is  
20 unusual for a variety of reasons, including having the  
21 core defendant, NECP being a small company in bankruptcy  
22 with limited assets and a finite amount of insurance,  
23 things may resolve more quickly than they might in a  
24 different situation.

02:03PM

25 It's not even clear to me NECP is fighting

1 on what I'll call the core liability issue, was the  
2 product tainted, and did it cause injury.

3 I don't know the answers to any of those  
4 questions, but I'm not going to do anything unless I  
5 think everyone's had a reasonable opportunity to be  
6 heard, unless I think the process is fair, unless  
7 everyone's had the discovery that they need. Having  
8 said that, I want to pull people's feet to the fire, we  
9 have a finite amount of resources here, and I want to  
10 try to get this case resolved in some reasonable time  
11 frame. I don't want to be doing this ten years from  
12 now. So, I hear what you're saying, like I say, I agree  
13 with the sentiments, at least the challenges involved,  
14 and I'm going to take it a step at a time. Okay.

02:04PM 15 MS. GREER: Well, your Honor, right now the  
16 CMO order does have the date in there.

17 THE COURT: I know it has the date in there,  
18 and we're going to meet once a month, and I wouldn't go  
19 to Las Vegas and wager your life's savings on that date  
20 being final. On the other hand, this case may look very  
21 different in January than it looks right now, I don't  
22 know, so let's put that on hold, and --

23 MR. SOBOL: If I may, your Honor --

24 THE COURT: Yes.

25 MR. SOBOL: -- just indicate that we could

1 take it up at the next status conference. In the  
2 meantime, obviously, the PSC is going to be plunging in  
3 with discovery. If they want any information from us,  
4 they can be asking us for the information, and we'll  
5 revisit it in a month from now.

6 THE COURT: Discovery is not stayed as to  
7 either the plaintiffs or unaffiliated defendants --

8 MR. SOBOL: Right.

9 THE COURT: -- at this stage?

02:05PM

10 MR. SOBOL: So it's just ready to go, so  
11 let's start litigating the case, and then if we have  
12 some issues, we'll bring them next month.

13 THE COURT: I'm confessing my ignorance  
14 here. There's some recent Supreme Court case directly  
15 on point, and I just don't know it. My authority to  
16 make rulings, for example, on Tennessee law is a  
17 Tennessee law constitutional. It's not clear to me that  
18 the MDL covers that, that it's appropriate for me. It  
19 may be, it may make sense. It may be that the parties  
20 consent because there's no other realistic way of  
21 dealing with it, but I would like early on, I think, to  
22 address those types of issues.

02:05PM

23 Am I really supposed to decide those, what  
24 may be very significant issues of Tennessee or Florida  
25 or Michigan law, you know, I am not an expert, it's fair

1 to say, in the law of any those of jurisdictions, and  
2 the bounds of my authority are not clear to me.

3 On the other hand, it's also not clear to me  
4 how else we would work this out. If there's some, you  
5 know, defendant in Florida or Michigan or Tennessee who  
6 says I shouldn't be in this case, you should decide a  
7 12(b)(6) motion in my favor, it seems fair to resolve  
8 that up front rather than waiting until the MDL is  
9 spinning cases back out to the different jurisdictions,  
10 so I just raise that as a potential issue.

02:06PM

11 THE COURT: All right. Anything else,  
12 Ms. Greer?

13 MS. GREER: I can just check. I think that  
14 covers everything.

15 THE COURT: All right. I'm going to leave  
16 the motion for reconsideration pending. We'll see how  
17 this meet and confer process goes. It may be superseded  
18 by a supplemental motion, we'll see how that works out.  
19 In the meantime, again, I'm attempting to balance things  
20 that are going to be difficult to balance, of moving  
21 this case along expeditiously in light of the finite  
22 resources and the unusual posture of the case with  
23 making sure everyone has a fair opportunity to litigate  
24 their issues, and that includes unaffiliated defendants,  
25 of whom there are dozens, if not hundreds.

02:07PM

1 MS. GREER: Well, your Honor, that's another  
2 point that we would make in our motion that I would like  
3 to reiterate here. A lot of people that are going to be  
4 affected by this order aren't even in the room yet,  
5 haven't been served, et cetera.

6 I think that one of the reasons we're here  
7 is because of the one-year statute and the need to bring  
8 this formally here, but there are a lot of people who  
9 presumably are waiting to see what happens.

02:08PM

10 THE COURT: But, of course, I can't wait  
11 until we have every defendant in every case. Some  
12 states has some six-year statute of limitations. I'm  
13 going to have to do this the best I can. As I've  
14 indicated in previous meetings, I do want to set up some  
15 process or procedure under which I can resolve 12(b)(6)  
16 motions, motion for summary judgment early on.

17 For parties who think that they are not  
18 properly in the case, I express no opinion one way or  
19 the other, but it seems to me in a normal litigation I  
20 would be resolving those issues early on, and I should  
21 be trying to do that here.

02:08PM

22 MS. GREER: We appreciate that, your Honor.

23 THE COURT: All right. Anything further on  
24 that, Mr. Gastel?

25 MR. GASTEL: At this time, no.



1 THE COURT: All right.

2 MS. PARKER: If I may, your Honor.

3 THE COURT: Yes.

4 MS. PARKER: One other scheduling matter  
5 since we're discussing the CMO, the master complaint is  
6 currently due on November 5th.

7 THE COURT: Yes.

8 MS. PARKER: The hearing on subpoena  
9 objections is scheduled for November 7th, which we  
02:09PM 10 believe means that many of the objections on the  
11 outstanding subpoenas will not be resolved until some  
12 time after that, so the PSC has not, and I'm not today  
13 asking the Court for relief on that particular issue,  
14 but I do expect that we may present some type of motion  
15 to address that to the Court before the next status  
16 conference.

17 THE COURT: And explain to me how.

18 MS. PARKER: One option, your Honor, might  
19 be to extend the deadline for the master complaint for a  
02:09PM 20 short period of time in order to allow production of  
21 documents in response to the subpoenas so that the PSC  
22 may incorporate those into the master complaint.  
23 Another option would be to file the master complaint on  
24 November 5th but to permit some type of amendment to  
25 incorporate any additional information that we received

1 in response to those subpoenas.

2 THE COURT: Explain to me how. Are there  
3 going to be multiple master complaints? In other words,  
4 they'll be a Tennessee complaint, a Florida complaint, a  
5 Michigan complaint. How is this expected to work?  
6 Mr. Sobol.

7 MR. SOBOL: In my experience in handling  
8 these multi-faceted things, it's a matter of really the  
9 power of the word processor. You know, really at some  
02:10PM 10 point the complaint ends up being so large, do we end up  
11 having to break it up? That's just really the reality  
12 of it. So, you know, we had the same problems in a  
13 matter in front of Judge Saris in AWP and the like, if  
14 the complaint ends up looking just too cumbersome  
15 because it has too many defendants and too many specific  
16 facts, we'd probably wind up having to break it up, but  
17 we're not looking forward to that, we're not trying to  
18 do that.

19 One of the other things that the PSC is in a  
02:10PM 20 position of having to do right now, too, is that with so  
21 few clinics right now opting into the mediation but with  
22 that remaining a moving target, if you will, for another  
23 21 days or whatever, you know, whatever the Court has  
24 just ordered, we will not know until three weeks or more  
25 from now which of the clinics remain out there that we

1 have to be suing to begin with.

2 That's been one of the issues that we have  
3 even with the current date, if you can follow what I'm  
4 saying. It's been a little bit of a juggling act  
5 because all the parties in very much good faith have  
6 been trying to balance the needs of trying to have  
7 consensual resolutions and not run up the meter, but by  
8 the same token, get going with litigation, so the short  
9 answer to your question is that right now, as the case  
10 schedule stands, come the end of the third week or  
11 thereabouts of October, we'll know what clinics are or  
12 are not in the mediation so that we'll know what  
13 potential targets there are to sue, and then the PSC --  
14 of course, we're working on this now anyway -- will have  
15 to craft the master complaint without any of the  
16 discovery that we've sought because that's been  
17 understandably postponed, then we can do the best we can  
18 under those circumstances by November 5th, knowing that  
19 we want to move forward with things, or, alternatively,  
20 we can postpone things again.

21 Neither of those results, frankly, are  
22 ideal, that's why I think that what Ms. Parker has  
23 suggested is that we're still sort of mulling it through  
24 ourselves, and she's flagging this issue for you, and  
25 we're going to try to come to an understanding as to

1 what we're going to do, and I've probably described a  
2 little bit too much of how the sausage is made. I'm  
3 sure, I hope you're going to love the sausage.

4 THE COURT: All right. My prejudice, if  
5 that's the right word, is going to be to hold to the  
6 November 5th date and to have amendments as appropriate.  
7 We're never going to achieve perfection, complete  
8 knowledge or at least not for some considerable amount  
9 of time, and we need a process in place. I feel like  
10 having a master complaint is long overdue.

02:13PM

11 This situation that we have with Tennessee  
12 and the other states is, you know, we're going to be  
13 repeating this soon enough with other jurisdictions. I  
14 feel like we need to get this on file, but let's see  
15 where we are. You can work on it and come up with a  
16 proposal if you think that doesn't work.

17 All right. 4b, motion to dismiss Alaunus.  
18 These are the motions that have been out there forever,  
19 right? Does anyone have a better idea than simply  
20 rolling those over yet again? Yes, sir.

02:14PM

21 MR. CIPORKIN: Your Honor, I'm working for  
22 Alaunus Pharmaceutical. I do not have a better idea.  
23 Your last order that was entered simply stated that the  
24 deadlines to respond would be stayed until further order  
25 of the Court.

1 THE COURT: Right.

2 MR. CIPORKIN: And as long as the deadline  
3 for discovery remains stayed as to the affiliated  
4 defendants, then we're content to keep your order in  
5 place for now.

6 THE COURT: All right. Just to state the  
7 obvious, I mean, those are stayed, we have the  
8 bankruptcy proceeding, we have mediation, we have what I  
9 assume are various negotiations. I'm not staying any of  
10 this for its own sake, and I would -- again, I'm anxious  
11 to move forward on some of these issues if they can't be  
12 resolved, you know, either voluntarily or somehow  
13 through the processes of the bankruptcy court.

14 I'm content to leave it in place for now,  
15 but I'm not doing this as a favor to anyone. In other  
16 words, I'm trying to permit this process to work itself  
17 out. While on the subject, where are we on obtaining  
18 discovery from the affiliated defendants?

19 MR. SOBOL: If I may, your Honor?

20 THE COURT: Yes, Mr. Sobol.

21 MR. SOBOL: Thank you. So, answering that  
22 question requires also giving the Court a little bit of  
23 information as to where we are regarding potential  
24 resolution with those defendants. So there has been  
25 some -- I'll say this first, aspirationally, some of us

1 had the notion that it would be a terrific result to be  
2 able to announce some form of a proposed resolution by  
3 October 3rd, which had been the one-year anniversary of  
4 the closing of NECC.

5 We didn't make that, however, I think that  
6 all the parties are acting in some good faith, and there  
7 has been some very substantial progress from my  
8 perspective personally since Labor Day.

9 Now, what do I mean when I say that? Apart  
02:16PM 10 from getting into the details, which, of course, I'm not  
11 going to get into, so there are insurers that are  
12 involved for NECC and a couple of the -- three of the  
13 related companies. There are excess insurers. There  
14 are the companies themselves, not just the primary ones  
15 that would come, you know, to the tip of your tongue  
16 immediately but some of the other entities behind it,  
17 and, of course, NECC and Ameridose and MSM itself, too.

18 So with all of that said, there has been  
19 very significant progress, and as you've seen, we've  
02:17PM 20 been delaying doing anything formal by way of discovery  
21 in the meantime. A sort of implicit condition of those  
22 negotiations has been for everybody to stand down in  
23 terms of doing formal discovery, so we've done that  
24 today.

25 Now, over the next short period of time,

1 probably now in the next status conference, the parties  
2 are going to continue to negotiate. At some point,  
3 they'll be some proposals, hopefully. At some point,  
4 one or more of the parties have to say, you know what,  
5 we've done enough, now we've got to start walking and  
6 chewing gum at the same time, meaning we've got to  
7 continue our settlement discussions but also go forward  
8 with litigation if we haven't been able to reach a  
9 resolution.

02:17PM

10 Now, the other thing that I'll point out  
11 before I finally give you what I think is the conclusion  
12 of this is that regardless of the results of a  
13 negotiation between the PSC, the creditors' committee  
14 and the trustee on the one hand and all of the  
15 affiliated entities and the individuals on the other  
16 hand, even if there were a complete proposal that  
17 suggested a resolution that created funds for victims  
18 that would be available upon confirmation of a plan,  
19 there would still be two other issues.

02:18PM

20 First, there would be a lot of time between  
21 then and the confirmation of the plan, and the second  
22 issue would be that there are other defendants that are  
23 out there, the clinics, that want some information and  
24 are entitled to discovery from NECC, perhaps Ameridose,  
25 MSM and the like. What does one do in that situation?

1           So, regardless of where these negotiations  
2     conclude, we're going to have to do the discovery  
3     anyway, and that's a discussion that has begun with the  
4     trustee and with some of the representatives of NECC and  
5     Ameridose, which is, you know, we're going to have to  
6     create a document depository that's available to  
7     everybody.

8           There may need to be some depositions of  
9     some people, they'll have to be made available to  
02:19PM 10    everybody, so where are we? I will say honestly that  
11    while we have sort of previously indicated that there  
12    were discussions, there were robusts and that kind of  
13    thing that you expect out of like a diplomacy-type  
14    meeting, I can say now more concretely that there's been  
15    some progress, and really by the time of the next status  
16    conference, we're going to need to grapple with the  
17    reality that there's going to have to be formal  
18    discovery with respect to these entities because we will  
19    be going forward with discovery regarding some of the  
02:19PM 20    clinics, and they're going to be entitled to it  
21    regardless.

22           And the one final thing I should put on this  
23    because I think it's a showing of the good faith by NECC  
24    and Mr. Fern and Mr. Moore, apart from formal discovery,  
25    there has been informal discovery, and the PSC has from



1 time to time asked information from Mr. Fern and NECC,  
2 and they've been providing document information, so  
3 there has been that exchange to enable some of the  
4 discussions and other things to occur. So it's not as  
5 if there hasn't been any kind of information being  
6 provided by NECC, that's not the case at all. That's  
7 what I would tell you where we're at on that topic.

8 THE COURT: All right. Anybody want to  
9 respond to that?

02:20PM 10 MR. FERN: Judge, if I can just follow up on  
11 what Mr. Sobol just commented on.

12 THE COURT: Can you speak into the mic.

13 MR. FERN: In addition, as the Court well  
14 knows, the trustee entered into an agreement with the  
15 PSC to do informal discovery to allow them to have some  
16 insight into the documents.

17 More so, those document requests have now  
18 turned to documents within NECC's possession vs. some of  
19 what the Court called before the national vendors who  
02:20PM 20 had access to the NECC facilities in the way of cleaning  
21 them, maintaining them, building them and the like.

22 Also, as part of the informal discovery,  
23 there have been e-mails from individual affiliated  
24 defendants as well as affiliated entities such as MSM  
25 have been produced. This process is ongoing, as

1 Mr. Sobol just commented on.

2 Recently we were asked for additional  
3 documents, such as the standard operating procedure  
4 manual, which was turned over quickly and in  
5 completeness. There were some other requests within the  
6 last week by members of the PSC, which my team is  
7 currently working on. I hope to have those produced  
8 soon.

9 Just as I gave the Court a report last time,  
02:21PM 10 we have now made nine informal productions via a file  
11 transfer process directly to the PSC. There have been  
12 over 27,000 pages of documents. In addition to that, to  
13 the Rust Omni depository, which is taking the HIPAA  
14 protected information, there were about 9700 pages of  
15 documents which have been produced to them.

16 We've continued to do that, as Mr. Sobol  
17 says, not that I'm inviting further requests, but as a  
18 comment, as the trustee feels they're appropriate, we  
19 will continue to cooperate and make those informal  
02:22PM 20 productions.

21 THE COURT: All right. I guess I'll leave  
22 it at this. I do, as Mr. Sobol says, this is going to  
23 happen almost certainly anyway, that is, the discovery  
24 production, having a central repository. There's  
25 unaffiliated defendants who are going to want to have

1 access to it and so on, and I know you have other things  
2 going on, but I do want to keep up the progress on this  
3 front as well.

4 All right. Number 5 is identification of  
5 Tennessee motions for summary judgment filed,  
6 pretransfer to MDL. Who wants to take up that?

7 MR. GASTEL: Ben Gastel, again, your Honor,  
8 if I may. We have identified in the agenda that was  
9 filed yesterday, there's really only one substantive  
02:23PM 10 motion before the Court right now that we identified  
11 there in the agenda.

12 The other issue is there's a motion for  
13 summary judgment that was filed in the O'Brien case, but  
14 that was filed in state court, and that case was moved  
15 to the Middle District of Tennessee, and it's been  
16 tagged for transfer, but it is not here yet, and those  
17 are the two motions that we have identified based on the  
18 Court's directive the last time we were here.

19 THE COURT: All right. And is there a  
02:23PM 20 proposal for what I do with that, stay responses?

21 MR. GASTEL: Yes, we filed yesterday, your  
22 Honor, a notice pursuant to your instruction from the  
23 last time about how to go ahead and handle these types  
24 of issues. I don't know if your Honor has had a chance  
25 to review that notice, but it essentially proposed three

1 categories of motions.

2 The first category is Rule 12 motions where  
3 a party seeks complete dismissal. We think that those  
4 motions should be gone ahead and briefed pursuant to the  
5 Court's local rule standard briefing schedule.

6 For dispositive motions filed under Rule 12  
7 that seek dismissal of only claims but not of a party,  
8 we propose that the briefing on those be stayed pending  
9 further the order of the Court, and the last is for  
10 dispositive motions filed under Rule 56, of which these  
11 two motions are, we propose that those motions be  
12 dismissed without prejudice so that the PSC may proceed  
13 with discovery related to those Rule 56 dispositive  
14 motions.

02:24PM 15 MR. CLINE: Your Honor, this is Matt Cline.

16 THE COURT: I'm sorry, who do you represent?

17 MR. CLINE: This is Matt Cline. We  
18 represent St. Thomas Outpatient Neurosurgical Center.  
19 We're the movants on these two motions for summary  
02:25PM 20 judgment. We just received this notice filed by the PSC  
21 with this proposal, and we would just ask the Court to  
22 wait to rule until we've had a time to look at it and  
23 quickly brief it.

24 THE COURT: All right. Why don't I do this.  
25 Why don't I, pending further order, why don't I hold in

1 abeyance any requirement to respond to either of these  
2 two motions, that is, in the Carman and O'Brien cases.  
3 I'll give St. Thomas a chance to respond to this  
4 proposal.

5 This, again, touches on the broader issue,  
6 what framework do I set up for resolving Rule 12  
7 motions, and I think it is a sensible distinction, the  
8 ones that get rid of parties altogether as opposed to  
9 ones that get rid of particular claims, which are  
10 perhaps of less immediacy, and Rule 56 motions, but I'm  
11 not prepared to make any decisions yet. I'll allow a  
12 response to this proposal, and we'll see where we go  
13 from there.

14 While I'm at it, this reminds me, the State  
15 of Tennessee has sought leave to intervene. Is there  
16 any reason I should not allow that?

17 MR. GASTEL: I guess I'll take that one as  
18 well. Yes, the plaintiff's position is that there's  
19 really no basis to prevent the State of Tennessee from  
20 intervening. We would like to reach out to the attorney  
21 general to maybe enter into some sort of joint  
22 stipulation so that they don't end up filing, you know,  
23 hundreds of these motions to intervene in every single  
24 case because principally every single Tennessee  
25 complaint is going to contain those allegations

1 challenging the constitutionality of certain tort reform  
2 law in Tennessee, and that's what's prompting the  
3 attorney general to intervene, and we think that that  
4 might, you know, ensure that there's a clean docket as  
5 opposed to a docket entry every single time that one of  
6 these cases gets transferred in.

7 THE COURT: All right. In the meantime, I'm  
8 going to grant the motion, which is it was filed at the  
9 main MDL docket, Docket Number 435. I will grant that,  
10 and it is my intention unless there's some particular  
11 circumstance mandating a different result that I would  
12 grant any similar motion permitting the State of  
13 Tennessee to intervene for the purpose of defending the  
14 constitutionality of any challenged Tennessee statute.

15 All right. Item 6 is status of bankruptcy  
16 proceedings. Who wants to take that up? Mr. Gottfried.

17 MR. GOTTFRIED: Thank you, your Honor.  
18 Well, I think you've already heard from Sobol that the  
19 trustee is continuing to make progress in negotiations  
20 with the affiliated defendants and has been  
21 collaborating and working with both the creditors'  
22 committee and the PSC in connection therewith. I think  
23 you also heard from my Brother, Mr. Molton, that the  
24 bankruptcy court established a bar date of January 15th.  
25 We are expecting to send out the notices on the 16th of

02:27PM

02:28PM

1 this month with respect to that.

2 Other than that, the trustee is continuing  
3 to deal with recalled products, continuing to marshal  
4 assets, including looking for the possibility of selling  
5 some equipment that is not covered by the preservation  
6 order to recoup some monies for the estate, and  
7 continuing to generally administer the estate.

8 THE COURT: All right. Anything else on  
9 status of bankruptcy?

02:29PM 10 (No response)

11 THE COURT: All right. Status of appeals.  
12 Who wants to take that up? Mr. Gottfried again.

13 MR. GOTTFRIED: As you know, the appeal from  
14 the bankruptcy court to your Honor has been dismissed.  
15 What remains is the appeal to the First Circuit of the  
16 transfer order. At this point, a briefing schedule has  
17 not yet been established, and I believe that will be the  
18 next step.

19 THE COURT: All right. And so it's not on  
02:29PM 20 any expedited schedule, at least at this stage?

21 MR. GOTTFRIED: Not at this stage.

22 THE COURT: All right. Is there anything  
23 else anyone wants to take up? Anything from the  
24 plaintiffs' side of the house?

25 MR. SOBOL: No, your Honor.

1 THE COURT: Creditors' committee?

2 MR. MOLTON: No, your Honor, thank you.

3 THE COURT: Bankruptcy trustee?

4 MR. GOTTFRIED: We're all set, thank you.

5 THE COURT: Any defendants? Mr. Fern.

6 MR. FERN: Judge, just to make the Court

7 aware, there are almost two dozen cases that are

8 duplicate cases filed in the MDL. Most of them were

9 filed early on in November and December of 2012 naming

02:30PM 10 only NECC before the petition of bankruptcy was filed on  
11 December 21.

12 With the Tennessee statute of limitations,  
13 new cases with the same plaintiffs were filed within the  
14 last couple of weeks now, not including NECC, but having  
15 many of the affiliated defendants as well as the local  
16 healthcare providers.

17 I am working with those individual counsel  
18 in Tennessee seeking a resolution that does not hurt  
19 anyone but allows them to voluntarily dismiss the first  
02:31PM 20 case, file a proof of claim in the bankruptcy court so  
21 they're protected against the bankruptcy estate, and  
22 then continue with the second filed case in the MDL  
23 court. Hopefully by when we return next month, I'll  
24 have all those resolved, so you may see duplicate names  
25 on your list.



1 THE COURT: All right. Thank you. Does  
2 anyone on the telephone wish to be heard on any issue?

3 MR. CLINE: This is Matt Cline again. We  
4 filed a joinder in the motion to reconsider filed by the  
5 St. Thomas entities. I was just asking for some  
6 clarification that the instruction of the PSC to meet  
7 and confer would also apply to all Tennessee defendants  
8 as well as the --

9 THE COURT: Yes, certainly all moving  
02:31PM 10 Tennessee defendants.

11 MR. CLINE: Okay.

12 THE COURT: That is, anyone who joined in  
13 the motion.

14 MR. CLINE: Okay. Thank you.

15 THE COURT: All right. Let's set one more  
16 date.

17 THE CLERK: January 10th. The next status  
18 is November 7th, then there's December 13th.  
19 January 10th at 1:30.

02:32PM 20 THE COURT: January 10th at 1:30. Does that  
21 work? So the next one will be November 7th and  
22 December 13th and January 10th at 1:30.

23 MS. PARKER: Your Honor.

24 THE COURT: Yes.

25 MS. PARKER: Counsel in the plaintiffs'

1 steering committee have some trials scheduled for the  
2 months of February and March. We were wondering if it  
3 would be possible to set dates for those status  
4 conferences, understanding they may need to be adjusted  
5 but so that we had some benchmarks.

6 THE COURT: All right.

7 THE CLERK: February 13th at 1:30.

8 THE COURT: February 13th at 1:30.

9 THE CLERK: March 13th at 2:00. We have a  
02:33PM 10 jury trial in the morning.

11 THE COURT: We can make it 1:30. I may be  
12 eating a sandwich on the bench, but I'll make it 1:30,  
13 get people out of here who need to fly back on the east  
14 coast. I'm sorry, what was the date again?

15 THE CLERK: March 13th.

16 THE COURT: March 13th at 1:30.

17 MS. PARKER: Thank you, your Honor.

18 MR. SOBOL: With the House willing?

19 THE COURT: I'm sorry.

02:34PM 20 MR. SOBOL: With the House willing?

21 THE COURT: Okay. Anything else? Thank  
22 you, all.

23 MS. PARKER: Thank you, your Honor.

24 (Whereupon, the hearing was adjourned at  
25 2:34 p.m.)

## C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS ) ss.  
CITY OF BOSTON )

I do hereby certify that the foregoing  
transcript, Pages 1 through 51 inclusive, was recorded  
by me stenographically at the time and place aforesaid  
in MDL NO. 13-02419-FDS, IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY CASES LITIGATION and thereafter by me reduced  
to typewriting and is a true and accurate record of the  
proceedings.

Dated this October 17, 2013.

s/s Valerie A. O'Hara

\_\_\_\_\_  
VALERIE A. O'HARA

OFFICIAL COURT REPORTER